

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

MOHAMMED KAMIN

ORDER

Inquiry Into the Mental Capacity or Mental
Responsibility of the Accused

24 August 2009

1. After considering the Defense Request for the Military Commission To Order a New Inquiry Into the Mental Health of the Accused (D-027), the Government's Response, the Defense Supplement to D-027 and the Government's response thereto, the Military Commission hereby ORDERS:

(a) that an inquiry into the mental capacity of Mohammed Kamin be conducted in accordance with Rule for Military Commissions 706;

(b) that the inquiry shall be conducted by a board consisting of two persons who are physicians or clinical psychologists. At least one member of the board shall be either a psychiatrist or a clinical psychologist. The board shall not include either COL [REDACTED], U.S. Army, or CAPT [REDACTED], U.S. Navy, both of whom sat on the prior R.M.C. 706 sanity board. If a Pashto speaking physician or clinical psychologist is reasonably available within the time constraints of the schedule set forth in paragraph 6 below, he or she should be appointed; in any event, the Government will designate a Pashto speaking interpreter to assist the board in its inquiry. Unless ordered by this Commission, this interpreter may not disclose anything learned during the inquiry, except to defense counsel (LCDR Richard Federico, JAGC, USN; CPT Clay West, JA USAR). The defense may choose to have its assigned interpreter present when the accused is examined, and the Government must provide reasonable notice to the defense as to when the inquiry is to be conducted;

(c) that this evaluation shall include an opportunity for the board to meet and confer with Mr. Kamin at an appropriate location as determined by the Commander, Joint Detention Group, Joint Task Force Guantanamo. If Mr. Kamin refuses to attend the sanity board voluntarily, JTF-GTMO shall forcibly extract Mr. Kamin from his cell and compel him to attend the board;

(d) that the board convened by this order, in its evaluation, shall make separate and distinct findings as to each of the following questions:

(1) At the time of the alleged criminal conduct, did the accused have a severe mental disease or defect? If so, what is the clinical diagnosis?

(2) Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his conduct?

(3) Is the accused presently suffering from a mental disease or defect? If so, what is the clinical psychiatric diagnosis?

(4) Does the accused have the present ability to consult with his lawyers with a reasonable degree of cognitive understanding and does he have a rational as well as a factual understanding of the proceedings against him? If so, does the accused have sufficient mental capacity to understand the nature of the proceedings against him (trial by commission) and to conduct or cooperate intelligently in the defense?

(e) that examinations and tests shall be conducted, if appropriate and required, to answer the questions set forth in paragraph 4 above, and a thorough review of the accused's available medical records shall also be conducted; and

(f) The Defense has requested that additional unspecified matters be considered by this board. The sanity board may, in its discretion, consider additional matters raised by the Defense, but is not required to conduct any test or review any material which the board concludes is unnecessary to answer the questions listed in paragraph 1(d) above.

2. The sanity board ordered in paragraph 1(a) above shall be completed as expeditiously as possible, consistent with a medically competent and thorough examination, to answer the specified questions. Consequently, it is FURTHER ORDERED that:

(a) Not later than 21 September 2009, the board shall prepare a summarized report consisting of only the board's ultimate conclusions as to all questions specified in paragraph 1(d). This report will be prepared in three copies. The Military Commissions Trial Judiciary Staff, trial counsel and the defense counsel will be telephonically notified when this report is ready to be picked-up. At the option of the officer responsible for the summarized report, it may be faxed or e-mailed to the Military Commissions Trial Judiciary Staff, trial counsel, and the defense counsel;

(b) Not later than 28 September 2009, the Board shall prepare its full report. This report shall be placed into a sealed envelope and provided only to LCDR Richard Federico, JAGC, USN and CPT Clay West, JA, USAR. The full report will NOT be faxed or e-mailed unless specifically requested by LCDR Richard Federico, JAGC, USN or CPT Clay West, JA, USAR; and

(c) Under no circumstances will the full report, matters considered by the Board during its inquiry, or any statements made by the accused to the board (or evidence derived there from) be disclosed to anyone other than LCDR Richard Federico, JAGC, USN, or CPT Clay West, JA, USAR, without express, written authorization from the military judge or defense counsel.

3. Additionally, it is FURTHER ORDERED:

(a) that the Government shall provide Dr. [REDACTED], Ph.D., expert consultant in clinical and forensic psychiatry for the defense, an opportunity to meet with Mr. Kamin to conduct an independent mental health examination of Mr. Kamin, provided Mr. Kamin agrees to meet with Dr. [REDACTED] voluntarily. Mr. Kamin shall not be forcibly extracted from his cell nor compelled to attend this meeting; and

(b) that the Government shall provide detailed defense counsel (LCDR Richard Federico, JAGC, USN and CPT Clay West, JA, USAR) the opportunity to meet with Mr. Kamin prior to the examination by the sanity board directed by paragraph 1(a) above, and again prior to the examination by Dr. [REDACTED] to advise Mr. Kamin regarding the mental health examinations, provided Mr. Kamin agrees to meet with counsel voluntarily. Mr. Kamin shall not be forcibly extracted from his cell nor compelled to attend meetings with counsel.

4. Nothing in this order shall be construed as authorizing more than one forced cell extraction of the accused, and only for purposes of the sanity board ordered in paragraph 1(a) above. The defense counsel and Dr. [REDACTED] may also attempt to meet with Mr. Kamin during the period of time he is extracted for purposes of the sanity board; however, if Mr. Kamin refuses to meet with counsel or Dr. [REDACTED] he shall not be forcibly extracted at another time for either of those purposes.

5. Telephone numbers: Military Commissions Trial Judiciary Staff: [REDACTED]; LT Rachel Trest, JAGC, USN, Assistant Trial Counsel: [REDACTED]; LCDR Richard Federico, JAGC, USN, Defense Counsel: [REDACTED]; CPT Clay West, JA, USAR, Defense Counsel: [REDACTED].

So Ordered this 24th day of August 2009.



W. THOMAS CUMBIE, Colonel, USAF
Military Judge

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

MOHAMMED KAMIN

ORDER

D-27


Extension of Time to Complete
RMC 706 Evaluation

1. On 31 August 2009 the defense filed a motion requesting an extension of time for completion of the summarized RMC 706 report until 2 November 2009, and for an extension of the complete RMC 706 report until 9 November 2009. The government has not responded to this motion, but the defense motion indicates that the government does not oppose it. In accordance with the Commission's oral approval of the extension granted at that time, the motion is GRANTED.

2. The Commission finds that delaying these proceedings until after 9 November 2009 is in the interests of justice as well as the best interests of both the public and the accused. Accordingly, the period of this delay will be excluded from speedy trial requirements under RMC 707.

3. This order and the pleadings related to it are authorized for public release pursuant to Rule 3.9 of the Rules of Court.

So Ordered this 1st day of October 2009.


W. Thomas Cumbie
Colonel, U.S. Air Force
Military Judge

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

MOHAMMED KAMIN

D-027

Supplement to Defense Motion

Requesting the Military Commission Order
a New Inquiry Into the Mental Health of
the Accused

11 August 2009

- 1. Timeliness:** This motion for appropriate relief is filed in a timely manner in accordance with Rule for Military Commission (R.M.C.) 706(b)(2) and the instructions entered by the Military Commission at the motions hearing on 15 July 2009.
- 2. Relief Requested:** Detailed defense counsel for Mr. Mohammed Kamin¹ respectfully request the Military Commission order a new inquiry into the mental health of Mr. Kamin pursuant to R.M.C. 706(b)(2).
- 3. Overview:** The Military Commission agreed on 15 July 2009 to order a new inquiry into the mental health of Mr. Kamin, but requested the defense file a Supplement to D-027 regarding terms of access for the R.M.C. 706 Board. This Supplement to D-027 also addresses terms of access for the defense expert consult in clinical and forensic psychiatry, Dr. [REDACTED] terms of access for defense counsel to advise Mr. Kamin prior to these examinations, and responds to the Commission's request for a list of items that the new R.M.C. 706 Board should review.
- 4. Burdens of Proof and Persuasion:** As the moving party, the defense bears the burden of proof on any question of fact. This burden is met by a showing of a preponderance of evidence. *See* R.M.C. 905(c).

5. Facts:

a. On 11 March 2008, charges were sworn against Mr. Kamin. Those charges were referred to a Military Commission on 4 April 2008. Mr. Kamin was arraigned on the charges on 21 May 2008.

¹ Detailed defense counsel file this Motion solely under the authority provided by the Commission on 21 May 2008 that detailed defense counsel shall represent the accused in this case and engage in the discovery process. The Commission ordered detailed defense counsel (LCDR Federico) to represent Mr. Kamin because "the statute requires it" and because "discovery issues and all of the information that would be necessary for you to get your defense rolling." *See Transcript of Hearing ICO United States v. Kamin*, May 21, 2008 (Draft), pg. 42. CPT West was detailed to the case on 29 January 2009 and acts under this same authority. Lacking authority from Mr. Kamin to do anything in his defense, detailed defense counsel concur that they must ethically engage in the discovery process to determine whether Mr. Kamin is competent to stand trial.

b. On 29 August 2008, detailed counsel for Mr. Kamin filed D-008, a motion requesting an inquiry into the mental health of Mr. Kamin in accordance with R.M.C. 706. In that request, counsel detailed personal observations of Mr. Kamin, court-room demeanor, refusal to meet with counsel, BSCT records, and confinement history to establish a good faith basis to request a mental health examination. *See* D-008.

c. On 10 September 2008, the Military Commission granted the defense request for an inquiry.

d. On 30 September and 1 October 2008, a clinical psychologist and a forensic psychiatrist requested to meet with Mr. Kamin. *See Transcript of Hearing ICO United States v. Kamin*, 23 October 2008 (Draft), pg. 185. Mr. Kamin refused those visits, and JTF-GTMO did not allow the doctors to proceed to Mr. Kamin's cell or to directly observe him in some other forum. *Id.* The sources of information the Board considered for their inquiry included certain medical records, DIMS records from 2005-2008, the Commission's 10 September 2008 Order for Inquiry, certain interrogator notes dated May to August 2003, discussions with defense counsel on 30 September 2008 and 1 October 2008, the defense motion for the Inquiry dated 29 August 2008, the Transcript of the Commission hearing dated 21 May 2008, and approximately 60 letters between Mr. Kamin and his family. *See* Redacted Part II Report of the R.M.C. 706 Board, dated October 3, 2008, filed as Appellate Exhibit 23.

e. The R.M.C. 706 Board did not observe Mr. Kamin by video or through the cell block, nor did the Board speak with Mr. Kamin. *See Transcript of Hearing ICO United States v. Kamin*, 23 October 2008 (Draft), pg. 185. The only person interviewed by the Board was detailed defense counsel. *Id.* No review of the medical records from Bagram, where Mr. Kamin was detained for 16 months, was conducted. *Id.* at p. 186. No review of the videotapes of Mr. Kamin's interrogation, movements, recreation, or in his cell was conducted. *Id.* No interviews of the guards, interpreters, or other detainees were conducted. *Id.* at pp. 186-187.

f. On 3 October 2008, the final report was drafted and shortly thereafter was provided to the defense.

g. On 23 October 2008, the defense objected to the Board results. The prosecution agreed during this hearing that re-opening the Board was appropriate. *See Transcript of Hearing ICO United States v. Kamin*, 23 October, 2008 (Draft), pp. 184, 196-197.

h. On 15 June 2009, the defense contacted the JTF-GTMO SJA requesting alternate access procedures to be used to visit Mr. Kamin. On 29 June 2009, JTF-GTMO SJA staff denied the defense request.

i. On 7 July 2009, the defense filed D-027 requesting the Military Commission order a new inquiry into the mental health of the accused. D-027 argued that the previous inquiry into the mental health of Mr. Kamin was not conducted in accordance with R.M.C. 706 or the Commission's Order dated 10 September 2008, and that fundamental fairness required a new inquiry. The Government Response to D-027 did not oppose the

requested relief but supported a limited order allowing Mr. Kamin to refuse the Board access to speak with him.

j. On 15 July 2009, the Military Commission held a hearing regarding D-027. The Commission agreed in principle to grant D-027 for a new inquiry into the mental health of the accused. *See Transcript of Hearing ICO United States v. Kamin*, July 15, 2009 (Draft), pg. 347. However, the Commission also requested the defense file a supplement to D-027 after speaking with the government to clarify the terms of access for the sanity board. *Id.* at p. 384. The Commission also requested that the defense provide a list of items it considered necessary for a thorough examination prior to the Board conducting its examination of Mr. Kamin. *Id.* at p. 347.

6. Law and Argument

TERMS OF ACCESS TO MR. KAMIN FOR THE R.M.C. 706 SANITY BOARD.

The standard visitation procedures employed by JTF-GTMO toward the R.M.C. 706 Board will not allow for a full inquiry into Mr. Kamin's mental health. An alternate procedure employed by Judge Emmet Sullivan of the U.S. District Court for the District of Columbia in the habeas case filed by Mr. Ramzi Bin Al-Shibh, 06-CV-1725, ordered that JTF-GTMO provide access to Mr. Bin Al-Shibh for the defense mental health expert to conduct his examination. *See D-027, Attachment C.* Mr. Bin Al-Shibh was notified of the purpose of his transfer but was not provided an option to refuse the transfer. Mr. Bin Al-Shibh went willingly, making a forced-cell extraction unnecessary. The defense expert was able to conduct a full analysis of Mr. Bin Al-Shibh over the course of the next three days.

A similar order requiring JTF-GTMO provide access to Mr. Kamin is necessary in Mr. Kamin's case to allow the R.M.C. 706 Board to conduct a full inquiry.

TERMS OF ACCESS TO MR. KAMIN FOR THE DEFENSE EXPERT CONSULTANT IN CLINICAL AND FORENSIC PSYCHIATRY.

On 12 March 2009, the Convening Authority appointed for the defense an expert consultant in the fields of clinical and forensic psychiatry – Dr. [REDACTED]. For the same reasons as described above, an order granting Dr. [REDACTED] the same access as the R.M.C. 706 Board to evaluate Mr. Kamin is necessary for the defense to receive the full benefit of Dr. Sweda's expert services.

TERMS OF ACCESS TO MR. KAMIN FOR THE DEFENSE TEAM TO ADVISE MR. KAMIN PRIOR TO THE MENTAL EVALUATIONS OF THE R.M.C. 706 BOARD AND THE DEFENSE EXPERT.

The defense team requires the same access to Mr. Kamin as the R.M.C. 706 Board and the defense mental health expert to advise Mr. Kamin prior to these two mental evaluations regarding the purpose of the mental health evaluation and his legal rights with respect to each examination.

APPOINTED MEMBERS OF THE R.M.C. 706 BOARD

This process requires a fresh set of eyes to ensure that a full and fair inquiry is conducted. Members other than COL [REDACTED], U.S. Army, or CAPT [REDACTED], U.S. Navy, both of whom sat on the prior R.M.C. 706 Board, should be appointed to the new Board.

LIST OF ITEMS THE NEW R.M.C. 706 BOARD SHOULD REVIEW.

The Military Commission requested the defense provide a list of items that the new R.M.C. 706 Board should review. *See Transcript of Hearing ICO United States v. Kamin*, 15 July 2009 (Draft), pg. 347. In accord with the confidentiality provisions of R.M.C. 706(c), the defense will provide this list directly to the Board prior to their examination of Mr. Kamin.

7. Oral Argument: The defense waives oral argument.

8. Request for Witnesses: Witnesses are not requested at this time. However, the nature of the possible defense reply could necessitate the addition of witnesses. If that is the case, counsel will provide a request at that time.

9. Certificate of Conference: The government does not oppose a new R.M.C. 706 Board. The defense conferenced the supplemental motion on 11 August 2009 by email and telephone but the government was unable to take a final position on the motion and draft order.

10. Additional Information: "The Military Judge has the sole authority to determine whether or not any given matter shall be released." *See* RC 3.9.c; *see also* R.M.C. 801; Reg. ¶¶ 19-5, 19-6. The Commission should seek to strike a balance of protecting Mr. Kamin's right to a fair trial, the improper or unwarranted publicity pertaining to the case, and the public understanding of the Military Commissions. *See* Reg. ¶ 19-1. The release of pleadings and rulings is essential for the public, writ large, to be able to assess and evaluate the legitimacy of United States judicial proceedings being held on a military base overseas and in a fortified courtroom. At a minimum, providing the public the opportunity to read and evaluate the pleadings and rulings would contribute to Mr. Kamin being able to have a "public trial." *See* U.S. Constitution, Sixth Amendment. This is especially true of the present motion as the sole basis for the continuance sought by the government is the "interests of justice." The defense hereby respectfully requests that the Military Judge authorize the Assistant Secretary of Defense for Public Affairs (or designee) to release this pleading and any and all responses, replies, and/or rulings under the same designation to the public at the earliest possible date.

11. Attachments

A. Draft Order for 706 Inquiry.

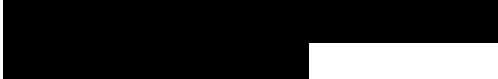
Respectfully submitted,

By: Richard E.N. Federico

LCDR RICHARD E.N. FEDERICO, JAGC, USN
Detailed Defense Counsel for
Mohammed Kamin

By: Clay M. West

CPT CLAY M. WEST, JA, USAR
Detailed Defense Counsel for
Mohammed Kamin

Office of the Chief Defense Counsel
Office of Military Commissions


ATTACHMENT A

[Provided as .doc file Attachment]

UNITED STATES OF AMERICA

v.

MOHAMMED KAMIN

D-027

GOVERNMENT RESPONSE

To Defense Motion for Order of an Inquiry into
the Mental Capacity or Mental Responsibility
of the Accused

14 July 2009

1. **Timeliness:** This motion is filed within the timelines established by Military Commissions Trial Judiciary Rule of Court 3(4)(a).

2. **Relief Requested:** The Government respectfully requests D-027 be granted in part and denied in part. The Government does not object to the requested relief, , but asks the Commission to use the same order that was filed for the previous hearing held under RULE FOR MILITARY COMMISSIONS (R.M.C.) 706.

3. **Overview:** The previous sanity board, convened on 30 September 2008, was conducted in accordance with R.M.C. 706 and the Commission's order, dated 10 September 2008. Although that board was adequate, a second sanity board could be more thorough if the accused agrees to participate. In an abundance of caution , the Government does not oppose a second R.M.C. 706 sanity board. The Government respectfully requests, however, that, like the Commission's Order of 10 September 2008, the new Order take into consideration the Government's duty to protect national security and maintain necessary force protection measures at JTF-GTMO.

4. **Burden and Persuasion:** The Defense, as the moving party on the original motion, has the burden. *See* R.M.C. 701(1)(3)(A). For any questions of fact, the burden is met by a showing of a preponderance of evidence. *See* R.M.C. 905(c)(1).

5. **Facts:**

a. On 11 March 2008, the Government swore the charges against Mr. Kamin. The charges were referred to a military commission on 4 April 2008. Mr. Kamin was arraigned on 21 May 2008. During the arraignment, Mr. Kamin repeatedly refused to accept representation by his detailed defense counsel. Mr. Kamin also declined to represent himself, *pro se*, and stated his intent not to attend any future proceedings.

b. On 31 July 2008, the defense filed a motion (D-006) seeking an Order from the Commission directing that detailed defense counsel be permitted on the cellblock to speak directly to Mr. Kamin. The parties litigated the motion at a hearing on that same date. During the hearing, Lieutenant Colonel (LTC) [REDACTED], JA, USA, Deputy SJA, JTF-GTMO, testified that he spoke with Mr. Kamin in his cell about attending the hearing. LTC [REDACTED] testified, "[h]e said no, that he did not have an attorney, that he did not want an attorney, that he did not want to come to the commissions." The Military Judge denied D-006 on 6 August 2008.

c. On 29 August 2008, detailed defense counsel filed D-008, a motion requesting an inquiry into the accused's mental health in accordance with R.M.C. 706. In that request, counsel detailed his personal observations of the accused and the accused's courtroom demeanor, his refusal to meet with counsel, his BSCT records, and his confinement history to establish a good faith basis to request a mental health examination. (See D-008).

d. The accused has been at GTMO in confinement in Camps Five and Six. (Attachment 1).

e. [REDACTED]

f. [REDACTED]

g. Within the detention camps in GTMO, there exists a coordinated effort by detainees to protest their detention and the Military Commissions system. On 31 July 2008, Commander (CDR) [REDACTED], U.S. Navy, Commanding Officer, Navy Expeditionary Guard Battalion, JTF-GTMO, testified that "[t]hey (the detainees) wanted – in solidarity, they want to show they don't support, in particular, the commission's process."

h. On 10 September 2008, the Military Commission granted the defense's unopposed request for a sanity board. (See D-027 Attachment A).

i. On 30 September and 1 October 2008, the sanity board, consisting of a clinical psychologist and a forensic psychiatrist, requested to meet with Mr. Kamin. (See *Transcript of Hearing ICO United States v. Kamin*, 23 October 2008 (Draft), pg. 185). The accused refused to meet with them. The sanity board reviewed the information that the Government and defense counsel provided to them to complete their analysis of the accused.

j. On 3 October 2008, the sanity board concluded that the accused was competent at the time of the alleged criminal conduct, that he was currently not suffering from a mental disease or defect, and that he had the present ability to consult with his lawyers with a reasonable degree of cognitive understanding and had a rational as well as factual understanding of the proceedings against him and had the ability to cooperate intelligently with the defense. (See Attachment 2).

k. Although the sanity board's report was published on 3 October 2008, the defense did not object to the report until 23 October 2008 in an oral motion to the Commission.

6. Discussion

a. *The government maintains its original position regarding the mental health of the accused, but out of an abundance of caution does not oppose a second R.M.C. 706 sanity board.*

i. The defense continues to contend that the accused has exhibited or made known facts suggesting he lacks mental responsibility or mental capacity. The Government has not made any such observations. The accused's actions demonstrate he is conscious of time and place, and does not lack the mental capacity to stand trial. However, the Government recognizes defense counsel's ethical duty to determine whether his client suffers from a diminished capacity to make adequately considered and legally binding decisions in connection with representation. The Government also recognizes that the accused is refusing to meet with his detailed defense counsel. Thus, out of an abundance of caution, the Government does not oppose a second sanity board under R.M.C. 706, based on detailed defense counsel's good faith interpretation of Mr. Kamin's actions.

ii. The original sanity board lacked information solely as a result of the accused's refusal to participate. JTF-GTMO's procedures had no effect on the board's level of inquiry or on their conclusions.

iii. Under R.M.C. 706 and the Commission's Order, dated 10 September 2008, the sanity board asked both the Government and defense counsel to provide them with materials to assist them in answering the questions raised in the Commission's Order. The Government provided the board with the charge sheet and the referral binder. The referral binder consisted of a variety of classified information relevant to the charge in this case that had been cleared by the national security agencies in accordance with R.M.C. 701(f) and MILITARY COMMISSIONS RULE OF EVIDENCE (M.C.R.E.) 505. Defense counsel received a copy of the binder's contents. Defense counsel, therefore, had an opportunity to submit any information to the sanity board that had been previously reviewed by the national security agencies. Although the accused knowingly declined to cooperate, the sanity board properly evaluated the accused on the information that was submitted by the Government and the defense counsel.

b. *A new order directing a second sanity board must provide the same protection afforded the U.S. Government's national security interests and JTF-GTMO's force protection measures as the Commission's Order dated 10 September 2008.*

i. In accordance with Protective Order #1, signed 3 June 2008, the sanity board can only review information that has been cleared by the national security agencies in accordance with R.M.C 701(f) and M.C.R.E. 505.

ii. The accused has the right to refuse to meet with the board. The defense seeks an order from the Commission that would allow the board to meet with the accused even if the accused refuses to meet with them. On 31 July 2008, the defense filed a Motion (D-006) seeking an Order from the Commission directing JTF-GTMO to permit detailed defense counsel on the cellblock to speak directly to Mr. Kamin. JTF-GTMO provided testimony describing the risk to force protection at JTF-GTMO if defense counsel or anyone else that was not normally on the block went back to the accused's cell in Camp 5 or Camp 6. The judge denied the defense

motion. The Commission should reach the same conclusion and issue a similar ruling with respect to members of the sanity board.

iii. Before detainees are removed from their cells, JTF-GTMO's policy requires personnel to inform them of the purpose and destination of their appointments. Detainees are also asked if they will go to an appointment willingly. Therefore, when JTF-GTMO notifies Mr. Kamin of his appointment with the sanity board, they will give him the choice to attend the meeting voluntarily.

7. Witness Request: The Government does not anticipate calling witnesses for this motion. The Government reserves the right, however, to call witnesses should the defense response raise issues that would require the Government to call witnesses in rebuttal.

8. Oral Argument: In view of the authorities cited above and in the original response, which directly, and conclusively, address the issues presented, the Government does not request oral argument. Should the Military Judge order the parties to present oral argument, the Government is prepared to do so.

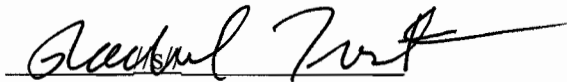
9. Response to Additional Information: The Government respectfully requests that the Military Judge authorize the Assistant Secretary of Defense for Public Affairs (or designee) to release this pleading and any and all responses, replies, and/or rulings under the same designation to the public only after a final judicial ruling has been published to the parties.

10. Attachments:

Attachment 1- Declaration by CDR [REDACTED], CDR, JAGC, USN

Attachment 2- 706 Report Part I, dated 3 October 2008.

11. Respectfully Submitted by:



Rachel E. Trest
LT, JAGC, USN
Assistant Trial Counsel
Office of Military Commissions
Office of Chief Prosecutor
[REDACTED]

ATTACHMENT 1



DEPARTMENT OF DEFENSE
HEADQUARTERS, JOINT TASK FORCE GUANTANAMO
U.S. NAVAL BASE, GUANTANAMO BAY, CUBA
APO AE 09380

DECLARATION OF COMMANDER [REDACTED]

Pursuant to 28 U.S.C. §1746, I, Commander [REDACTED] declare as follows:

1. I am a Commander in the United States Navy, with 18 years of active duty service. I currently serve as the Staff Judge Advocate (SJA) of Joint Task Force - Guantanamo (JTF-GTMO), at Naval Station Guantanamo Bay, Cuba. I have held this position since 25 July 2008. As such, I am the principal legal advisor to the JTF-GTMO Commander and his subordinate commanders.

2. This declaration is based on my own personal knowledge and information made available to me through my official duties.

DETAINEE VISITS

3. JTF-GTMO takes very seriously the matter of counsel visits with detainees. These meetings occur on a daily basis, and occur in the context of habeas, Detainee Treatment Act, and Military Commissions cases. In 2008, JTF-GTMO facilitated over 1,850 counsel visits with their detainee clients. It is JTF-GTMO policy to allow counsel access to their clients consistent with our established standard operating procedures and the terms of the various protective orders issued by the courts. During their stay at JTF-GTMO, counsel are provided with accommodations and appropriate facilities to meet with their clients.

4. JTF-GTMO has established a specific procedure to facilitate counsel visits with clients. In every instance, detainee escort personnel advise the detainee that counsel has arrived, generally about 15 minutes prior to the meeting. Should the detainee refuse to go to the visit, a military attorney from my office, the JTF-GTMO Office of the Staff Judge Advocate (SJA), will

then meet with counsel and advise him or her of the detainee's refusal to meet with counsel. At that time, counsel is provided the opportunity to write a note to the detainee, which is promptly delivered to the detainee by the SJA attorney.

5. To deliver the note, the SJA attorney ensures an appropriate translator is present (if required), and then immediately goes to the detainee's physical location, which may be the cell block in which he is housed or recreation area of the camp in which he is located. Upon locating the detainee, the SJA attorney informs him that his counsel has written a note and asks the detainee if he wants it. If requested by the detainee, the SJA attorney will read the letter aloud to the detainee (through the translator, if appropriate). If the detainee has a verbal or written response to the letter, that will be relayed to the counsel by the SJA attorney. If the detainee wishes to read the letter himself, the SJA attorney will wait for the detainee to finish reading the letter and provide a response. If the detainee refuses to take possession of the letter or if he continues to decline to attend the counsel meeting, those actions are considered a full refusal by the detainee to meet with counsel.

6. Alternatively, if the detainee elects to meet with counsel, the detainee is transported from his current location to the meeting place. Normally, counsel/detainee meetings take place at Camp Echo, a location specifically designed to facilitate such meetings in a secure and safe environment. Because of security and safety concerns for both JTF-GTMO personnel and the detainee, transportation of detainees between camps at JTF-GTMO requires substantial logistical coordination.

[REDACTED]

[REDACTED]

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] JTF-GTMO personnel are not permitted to encourage or discourage detainees from attending visits with their counsel nor are they allowed to discuss those visits or the ramifications of attending or not attending a meeting with counsel. The Department of Defense does not permit personnel to interfere with the relationship between a detainee and his counsel. This includes a prohibition on insulting a counsel, on making disparaging comments about the counsel, and on retaliating against a detainee for having met with a counsel or for being involved in habeas litigation. Detainees are not granted or denied privileges, disciplined, or otherwise discriminated against on the basis of involvement in litigation or meeting with counsel.

8. [REDACTED]

[REDACTED]

9. With the exception of representatives of the International Committee of the Red Cross (ICRC), non-JTF-GTMO personnel are prohibited from entering an active cell block to meet with or visit any detainee. This is a policy established to preserve the good order and discipline of the operations at JTF-GTMO, to ensure the safety of the detainees, counsel and members of JTF-GTMO and is of paramount importance. Any alteration to or deviation from that policy would severely impact operations in several negative ways.

10. First, on a daily basis, there are multiple coordinated movements continually occurring on each block; detainees are being taken to and from recreation, to and from legal meetings, to and from phone calls, to and from medical appointments, to and from the shower, to and from classes, to and from communal time, to and from movie/media rooms, et cetera. [REDACTED]

[REDACTED]

daily operational activities that involve JTF-GTMO personnel include serving meals, prayer calls, and medical personnel performing a medical pass every day on each block.

11. Furthermore, JTF-GTMO procedures are established to ensure the safety of personnel and the detainees, and allowing non-JTF-GTMO personnel on the blocks places them at risk of assault by a detainee. Most notably, this occurs in the form of being assaulted/splashed with bodily fluids, to include feces and urine. These types of assaults have occurred hundreds times in the past. Encounters such as this are more likely to occur when detainees are agitated or disgruntled, such as after a detainee has clearly expressed his desire not to meet with his counsel.

12. Finally, and importantly, allowing non-JTF-GTMO personnel on a block can incite mass block disturbances. Detainees are able to recognize regular personnel (including ICRC representatives) and know when someone "new" is on the block. [REDACTED]

[REDACTED]

[REDACTED] Allowing non-JTF-GTMO personnel, including counsel, RMC 706 Board members, and/or their interpreters, to meet with a detainee on the cell block, or any area other than that specifically designated for that purpose would seriously compromise the safety of all concerned, including the detainees. These procedures have been established to promote appropriate contact and communication with the

detainees. Deviating from the policies would jeopardize good order and discipline within the facility and impede the performance of daily operations.

LOGISTICS OF MEETINGS IN CAMP 6

13. Within Camp 6, wherein ISN 1045 is currently housed, there are special logistical concerns, which would make counsel meetings, RMC 706 Board meetings, or any non-JTF-GTMO meetings within the camp unworkable. Camp 6 is comparable to and modeled after a high security, single cell detention facility in the United States. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Detainees are permitted to participate in uninterrupted group prayer (led by a block detainee imam of their choosing) five times per day.

14. In order to facilitate a non-JTF-GTMO meeting on a cell block in Camp 6, all detainee movements (as described in paragraph 10) on the block would have to be secured, resulting in the potential disruption of the movement of all other detainees on the block for recreation, communal time, phone calls, and other appointments, and the potential disruption of daily prayers, meals, medical pass, and mail delivery. [REDACTED]

[REDACTED]

15. In addition to the security concerns outlined above, even if non-JTF-GTMO personnel were allowed onto a block in Camp 6, JTF-GTMO is unable to force the detainee to approach his cell door or to guarantee that the face-to-face meeting would actually take place. Nor are there any mechanisms to prevent the other detainees from approaching their cell doors at the same

time. In other words, JTF-GTMO cannot guarantee that the detainee would come to the cell door to meet his counsel, RMC 706 Board members, or other non-JTF-GTMO personnel and, even if the detainee did so, JTF-GTMO cannot guarantee that the meeting would be confidential as other detainees could likewise come to their doors. JTF-GTMO cannot guarantee that other detainees would not disrupt the meeting or attempt to assault the counsel or other non-JTF-GTMO personnel.

ATTEMPTED MEETING WITH ISN 1045

16. On 20 May 2008, ISN 1045 was housed in Camp 6. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. As outlined above, an attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 6. On this occasion, ISN 1045 tore up the letter from counsel. The SJA attorney noted this response as a full refusal.

17. On 3 June 2008, ISN 1045 was housed in Camp 6. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 6. ISN 1045 refused to meet with his attorney.

18. On 25 June 2008, ISN 1045 was housed in Camp 5. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and

provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 5. ISN 1045 refused to meet with his attorney, stating he had no attorney.

19. On 26 June 2008, ISN 1045 was housed in Camp 5. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 5. ISN 1045 refused to meet with his attorney.

20. On 29 July 2008, ISN 1045 was housed in Camp 5. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 5. ISN 1045 refused to meet with his attorney.

21. On 30 July 2008, ISN 1045 was housed in Camp 5. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 5. ISN 1045 refused to meet with his attorney and asked that SJA pass on to his attorney that he does not want to go back to his home country.

22. On 1 October 2008, ISN 1045 was housed in Camp 5. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them

the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 5. ISN 1045 would not take the letter and refused to meet with his attorney. ISN 1045 stated he does not have a lawyer and did not want any letters.

23. On 22 October 2008, ISN 1045 was housed in Camp 5. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 5. ISN 1045 would not take the letter and refused to meet with his attorney.

24. On 14 January 2009, ISN 1045 was housed in Camp 6. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 6. ISN 1045 refused his legal visit.

25. On 18 February 2009, ISN 1045 was housed in Camp 6. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 6. ISN 1045 read the memo, refused to meet with his attorney, and stated in Pushtu that he does not like this attorney and does not want an attorney.

26. On 25 February 2009, ISN 1045 was housed in Camp 6. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 6. ISN 1045 refused to meet with his attorney.

27. On 25 March 2009, ISN 1045 was housed in Camp 6. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. Counsel wrote a note and provided it to the SJA attorney, who then hand carried it to ISN 1045 in Camp 6. ISN 1045 refused the memo, refused to allow the interpreter to read the memo, and said he did not want to see any attorney anymore.

28. On 18 May 2009, ISN 1045 was housed in Camp 6. Pursuant to a request from defense counsel, an attorney from the SJA's office went to Camp 6 and read a message to ISN 1045, notifying him that his defense attorney would be coming to Guantanamo Bay to meet with him and that counsel had recently returned from a trip to Afghanistan where they spent time with his family. The SJA attorney showed ISN 1045 pictures of counsel with ISN 1045's family and further conveyed that counsel had additional photographs to show ISN 1045. The SJA attorney conveyed the message in English and through a Pushtu interpreter. ISN 1045 wrote a response in Pushtu, which translated to: "You are not my lawyer. I do not need you. I will not talk to you."

29. On 20 May 2009, ISN 1045 was housed in Camp 6. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting.

An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. With the permission of detailed defense counsel, the Chief Defense Counsel requested to meet with ISN 1045 and wrote a note on a Commissions Request form and provided both English and Pushtu versions to the SJA attorney, who then hand carried the notes to ISN 1045 in Camp 6. ISN 1045 was served with the Commissions Request forms. ISN 1045 received the Pushtu memo and read it but refused to meet with the attorney. ISN 1045 wrote a Pushtu response, which translated to: "I don't consider myself accused of any terrorism, that is why I don't need lawyers that can defend me." ISN 1045 further stated: "As I told you before, I tell you now again now and later on the same. I don't need a lawyer or a judge. I just want to go home."

30. On 21 May 2009, ISN 1045 was housed in Camp 6. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them the opportunity to write a note to ISN 1045 regarding the meeting. With the permission of detailed defense counsel, the Chief Defense Counsel requested to meet with ISN 1045 and wrote a note on a Commissions Request form and provided both English and Pushtu versions to the SJA attorney, who then hand carried the notes to ISN 1045 in Camp 6. ISN 1045 received the Pushtu memo and read it but refused to meet with the attorney. ISN 1045 wrote a response in Pushtu, which translated to: "I want the pictures, that is my right. If [you] don't give me the pictures, I will tell to Red Cross. I don't want to see you. That is it."

31. On 13 July 2009, ISN 1045 was housed in Camp 6. ISN 1045 was informed by the detainee escorts that counsel had requested to meet with him. ISN 1045 refused that meeting. An attorney from the SJA's office notified ISN 1045's counsel of the refusal and offered them

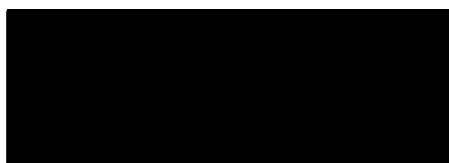
the opportunity to write a note to ISN 1045 regarding the meeting. Counsel declined to write a note to ISN 1045.

ISN 1045 LEGAL MAIL AND PHONE CALLS

32. On 12 January 2009, ISN 1045 accepted 1 piece of legal mail.
33. On 3 February 2009, ISN 1045 refused 1 piece of legal mail.
34. On 9 February 2009, ISN 1045 accepted 1 piece of legal mail.
35. On 10 February 2009, ISN 1045 refused 1 piece of legal mail.
36. On 17 February 2009, ISN 1045 refused 1 piece of legal mail.
37. On 23 March 2009, ISN 1045 refused 1 piece of legal mail.
38. On 3 April 2009, ISN 1045 was offered delivery of 1 piece of legal mail, however, the SJA tracker does not indicate whether this legal mail was accepted or refused by ISN 1045.
39. On 3 June 2009, ISN 1045 refused 1 piece of legal mail.
40. On 9 June 2009, ISN 1045 was offered delivery of 1 piece of legal mail, however, the SJA tracker does not indicate whether this legal mail was accepted or refused by ISN 1045.
41. On 25 June 2009, ISN 1045 refused 1 piece of legal mail.
42. JTF-GTMO has no record of any outgoing legal mail from ISN 1045 to counsel.
43. A review of JTF-GTMO telephone call logs reveals no counsel telephone calls for ISN 1045.

I declare under penalty of perjury that the foregoing is true, accurate, and correct to the best of my knowledge.

Date: 13 July 2009



Commander, JAGC, U.S. Navy
Staff Judge Advocate, JTF-GTMO

ATTACHMENT 2

R.M.C. 706 Board
US v. Kamin
Part I

Date October 3, 2008

Memorandum for Trial Counsel and Military Judge, US v. Mohammed Kamin.

PURPOSE. This is Part I of an R.M.C. 706 Board. This document is the short report of the Board. The 706 Board was held from Sept 30 to Oct 2, 2008. The Board consisted of one board-certified forensic Army psychiatrist, COL [REDACTED], and one board-certified clinical Navy psychologist, CAPT [REDACTED].

The findings of the Board are as follows:

- 1) At the time of the alleged criminal conduct, did the accused have a severe mental disease or defect? No. If so, what is the clinical psychiatric diagnosis? N/A.
- 2) Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his conduct? No.
- 3) Is the accused presently suffering from a mental disease or defect? No. If so, what is the clinical psychiatric diagnosis? N/A.
- 4) Does the accused have the present ability to consult with his lawyers with a reasonable degree of cognitive understanding and does he have a rational as well as a factual understanding of the proceedings against him? Yes. If so, does the accused have sufficient mental capacity to understand the proceedings against him (trial by commission) or to conduct or cooperate intelligently in the defense? Yes.

[REDACTED]
COL, MC, USA

[REDACTED]
CAPT, MSC, USN

ATTACHMENT 3

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

MOHAMMED KAMIN

D-027

Second Supplement to Defense Motion

Requesting the Military Commission Order
a New Inquiry Into the Mental Health of
the Accused

31 August 2009

- 1. Timeliness:** This motion for appropriate relief is filed in a timely manner in accordance with Rule for Military Commission (R.M.C.) 706(b)(2).
- 2. Relief Requested:** Detailed defense counsel for Mr. Mohammed Kamin¹ respectfully request the Military Commission revise the suspense dates in the 24 August 2009 Commission Order.
- 3. Overview:** The Military Commission agreed on 15 July 2009 to order a new inquiry into the mental health of Mr. Kamin, and on 24 August 2009 entered an Order to this effect. Because the defense expert's terms of access to Mr. Kamin in the Commission's order is derivative of the sanity board's access, detailed defense counsel propose a revised draft order to D-027 moving the suspense dates in paragraphs 2(a) and 2(b) to accommodate the defense expert's schedule.
- 4. Burdens of Proof and Persuasion:** As the moving party, the defense bears the burden of proof on any question of fact. This burden is met by a showing of a preponderance of evidence. *See* R.M.C. 905(c).
- 5. Facts:**
 - a. On 7 July 2009, the defense filed D-027 requesting the Military Commission order a new inquiry into the mental health of the accused. D-027 argued that the previous inquiry into the mental health of Mr. Kamin was not conducted in accordance with R.M.C. 706 or the Commission's Order dated 10 September 2008, and that fundamental fairness required a new inquiry. The Government Response to D-027 did not oppose the

¹ Detailed defense counsel file this Motion solely under the authority provided by the Commission on 21 May 2008 that detailed defense counsel shall represent the accused in this case and engage in the discovery process. The Commission ordered detailed defense counsel (LCDR Federico) to represent Mr. Kamin because "the statute requires it" and because "discovery issues and all of the information that would be necessary for you to get your defense rolling." *See Transcript of Hearing ICO United States v. Kamin*, May 21, 2008 (Draft), pg. 42. CPT West was detailed to the case on 29 January 2009 and acts under this same authority. Lacking authority from Mr. Kamin to do anything in his defense, detailed defense counsel concur that they must ethically engage in the discovery process and this R.M.C. 706 inquiry to determine whether Mr. Kamin is competent to stand trial.

requested relief but supported a limited order allowing Mr. Kamin to refuse the Board access to speak with him.

b. On 15 July 2009, the Military Commission held a hearing regarding D-027. The Commission agreed in principle to grant D-027 for a new inquiry into the mental health of the accused. *See Transcript of Hearing ICO United States v. Kamin*, July 15, 2009 (Draft), pg. 347. However, the Commission also requested the defense file a supplement to D-027 after speaking with the government to clarify the terms of access for the sanity board. *Id.* at p. 384. The Commission also requested that the defense provide a list of items it considered necessary for a thorough examination prior to the Board conducting its examination of Mr. Kamin. *Id.* at p. 347.

c. On 11 August 2009, the defense filed a Supplement to Defense Motion D-027 specifying terms of access to Mr. Kamin for the sanity board, the defense expert consultant in clinical and forensic psychiatry, and the defense team. The government responded on 18 August 2009, and the Commission entered its Order on 24 August 2009.

6. Law and Argument

DATES AND TERMS OF ACCESS TO MR. KAMIN FOR THE DEFENSE EXPERT CONSULTANT IN CLINICAL AND FORENSIC PSYCHIATRY.

The 24 August 2009 Commission Order granted limited access to Mr. Kamin for the defense expert consultant in the fields of clinical and forensic psychiatry (Dr. [REDACTED]). In order for Dr. [REDACTED] to take advantage of the access granted in the Commission's order, he will have to coordinate his travel with the travel schedule of the sanity board. Dr. [REDACTED] has a long-planned vacation to Greece from 10 – 26 September 2009. Dr. [REDACTED] also has committed to testifying as an expert witness in the general court-martial of Senior Airman [REDACTED], scheduled from 6 – 9 October 2009 at Goodfellow Air Force Base in San Angelo, Texas.

Due to these scheduling conflicts with the travel necessary to meet the sanity board report suspense dates of 21 September and 28 September 2009 in the original Commission Order (paragraphs 2(a) and 2(b)), the defense respectfully requests the Commission defer the sanity board suspense dates to 2 November 2009 for the summarized report, and 9 November 2009 for the full report.

These new suspense dates will allow the sanity board to visit Mr. Kamin during a time when Dr. [REDACTED] also is available to travel to Guantanamo Bay and benefit from the terms of access proposed in the Commission's 24 August 2009 Order.

A revised order to this effect is enclosed as Attachment A.

7. Oral Argument: The defense waives oral argument.

8. Request for Witnesses: Witnesses are not requested at this time.

9. Certificate of Conference: The defense conferenced this Second Supplement to D-027 on 31 August 2009 and the government does not oppose the requested relief.

10. Additional Information: "The Military Judge has the sole authority to determine whether or not any given matter shall be released." *See* RC 3.9.c; *see also* R.M.C. 801; Reg. ¶¶ 19-5, 19-6. The Commission should seek to strike a balance of protecting Mr. Kamin's right to a fair trial, the improper or unwarranted publicity pertaining to the case, and the public understanding of the Military Commissions. *See* Reg. ¶ 19-1. The release of pleadings and rulings is essential for the public, writ large, to be able to assess and evaluate the legitimacy of United States judicial proceedings being held on a military base overseas and in a fortified courtroom. At a minimum, providing the public the opportunity to read and evaluate the pleadings and rulings would contribute to Mr. Kamin being able to have a "public trial." *See* U.S. Constitution, Sixth Amendment. This is especially true of the present motion as the sole basis for the continuance sought by the government is the "interests of justice." The defense hereby respectfully requests that the Military Judge authorize the Assistant Secretary of Defense for Public Affairs (or designee) to release this pleading and any and all responses, replies, and/or rulings under the same designation to the public at the earliest possible date.

11. Attachments

A. Alternate Draft Order for 706 Inquiry.

Respectfully submitted,

By: Richard E.N. Federico

LCDR RICHARD E.N. FEDERICO, JAGC, USN
*Detailed Defense Counsel for
Mohammed Kamin*

By: Clay M. West

CPT CLAY M. WEST, JA, USAR
*Detailed Defense Counsel for
Mohammed Kamin*

Office of the Chief Defense Counsel
Office of Military Commissions


ATTACHMENT A
[Provided as .doc file Attachment]

UNITED STATES OF AMERICA

v.

MOHAMMED KAMIN

D-027

GOVERNMENT RESPONSE

To Supplement to Defense Motion for Order of
an Inquiry into the Mental Capacity or Mental
Responsibility of the Accused

18 August 2009

1. **Timeliness:** This motion is filed within the timelines established by Military Commissions Trial Judiciary Rule of Court 3(4)(a).
2. **Relief Requested:** The Government respectfully requests D-027 be granted in part and denied in part.
3. **Overview:** The previous sanity board, convened on 30 September 2008, was conducted in accordance with R.M.C. 706 and the Commission's order, dated 10 September 2008. Although that board was adequate, a second sanity board could be more thorough if the accused agrees to participate. In an abundance of caution, the Government does not oppose a second R.M.C. 706 sanity board. The Government respectfully requests, however, that, like the Commission's Order of 10 September 2008, the new Order take into consideration the Government's duty to protect national security and maintain necessary force protection measures at JTF-GTMO.
4. **Burden and Persuasion:** The Defense, as the moving party on the original motion, has the burden. See R.M.C. 701(1)(3)(A). For any questions of fact, the burden is met by a showing of a preponderance of evidence. See R.M.C. 905(c)(1).
5. **Facts:**
 - a. On 11 March 2008, the Government swore the charges against Mr. Kamin. The charges were referred to a military commission on 4 April 2008. Mr. Kamin was arraigned on 21 May 2008. During the arraignment, Mr. Kamin repeatedly refused to accept representation by his detailed defense counsel. Mr. Kamin also declined to represent himself, *pro se*, and stated his intent not to attend any future proceedings.
 - b. On 31 July 2008, the defense filed a motion (D-006) seeking an Order from the Commission directing that detailed defense counsel be permitted on the cellblock to speak directly to Mr. Kamin. The parties litigated the motion at a hearing on that same date. During the hearing, Lieutenant Colonel (LTC) [REDACTED], JA, USA, Deputy SJA, JTF-GTMO, testified that he spoke with Mr. Kamin in his cell about attending the hearing. LTC [REDACTED] testified, "[h]e said no, that he did not have an attorney, that he did not want an attorney, that he did not want to come to the commissions." The Military Judge denied D-006 on 6 August 2008.

c. On 29 August 2008, detailed defense counsel filed D-008, a motion requesting an inquiry into the accused's mental health in accordance with R.M.C. 706. In that request, counsel detailed his personal observations of the accused and the accused's courtroom demeanor, his refusal to meet with counsel, his BSCT records, and his confinement history to establish a good faith basis to request a mental health examination. (See D-008).

d. The accused has been at GTMO in confinement in Camps Five and Six. (Attachment 1).

e. [REDACTED]

f. [REDACTED]

(accessed August 28, 2008).

g. Within the detention camps in GTMO, there exists a coordinated effort by detainees to protest their detention and the Military Commissions system. On 31 July 2008, Commander (CDR) [REDACTED], U.S. Navy, Commanding Officer, Navy Expeditionary Guard Battalion, JTF-GTMO, testified that "[t]hey (the detainees) wanted – in solidarity, they want to show they don't support, in particular, the commission's process."

h. On 10 September 2008, the Military Commission granted the defense's unopposed request for a sanity board. (See D-027 Attachment A).

i. On 30 September and 1 October 2008, the sanity board, consisting of a clinical psychologist and a forensic psychiatrist, requested to meet with Mr. Kamin. (See *Transcript of Hearing ICO United States v. Kamin*, 23 October 2008 (Draft), pg. 185). The accused refused to meet with them. The sanity board reviewed the information that the Government and defense counsel provided to them to complete their analysis of the accused.

j. On 3 October 2008, the sanity board concluded that the accused was competent at the time of the alleged criminal conduct, that he was currently not suffering from a mental disease or defect, and that he had the present ability to consult with his lawyers with a reasonable degree of cognitive understanding and had a rational as well as factual understanding of the proceedings against him and had the ability to cooperate intelligently with the defense. (See Attachment 2).

k. Although the sanity board's report was published on 3 October 2008, the defense did not object to the report until 23 October 2008 in an oral motion to the Commission.

l. On 7 July 2009, the defense filed D-027 requesting a new 706 board. The Government did not oppose a new inquiry, but proposed an order allowing Mr. Kamin to refuse to meet with the board.

m. On 15 July 2009, the Commission held a hearing in which the Commission requested JTF-GTMO's position on the access of the new sanity board to Mr. Kamin. The Government agreed to seek out JTF-GTMO's position on granting the board access to Mr. Kamin. JTF-GTMO provided a declaration detailing the circumstances under which the sanity board may meet with Mr. Kamin.

6. Discussion

a. *The government proposes the Commission order a forcible cell extraction, if necessary, to facilitate Mr. Kamin meeting with the Sanity Board, but the Government opposes any additional forcible cell extractions for the purpose of a meeting with defense counsel or, by extension, the defense mental health expert consultant, Dr. [REDACTED]*

i. In the attached declaration, JTF-GTMO expresses its willingness to facilitate a meeting between the sanity board and Mr. Kamin. JTF-GTMO reiterates their unwillingness, based on their force protection measures and the Government's national security interests, to deceive Mr. Kamin or to change where Mr. Kamin is currently housed. JTF-GTMO also indicates their desire to avoid forcible cell extractions whenever possible but their willingness to remove Mr. Kamin involuntarily from his cell pursuant to a judge's order. JTF-GTMO has indicated that they will offer Mr. Kamin an opportunity to attend the sanity board hearing voluntarily initially. If Mr. Kamin refuses, then pursuant to a judicial order, JTF-GTMO will involuntarily remove Mr. Kamin from his cell.

ii. Since competency is a necessary precursor to placing Mr. Kamin on trial, the Government believes Mr. Kamin's presence at the sanity board outweighs the interests that counsel against forcing Mr. Kamin to attend. However, the Government objects to any separate forcible cell extractions for the purpose of Mr. Kamin meeting with counsel or with Dr. [REDACTED]. Mr. Kamin has the absolute right to refuse the assistance of counsel. Dr. [REDACTED] is an extension of defense counsel, appointed for the purposes of aiding defense counsel in assessing Mr. Kamin's competency and state of mind. Therefore, Mr. Kamin has the right to refuse to meet with Dr. [REDACTED].

7. Witness Request: The Government does not anticipate calling witnesses for this motion. The Government reserves the right, however, to call witnesses should the defense response raise issues that would require the Government to call witnesses in rebuttal.

8. Oral Argument: In view of the authorities cited above and in the original response, which directly, and conclusively, address the issues presented, the Government does not request oral argument. Should the Military Judge order the parties to present oral argument, the Government is prepared to do so.

9. Response to Additional Information: The Government respectfully requests that the Military Judge authorize the Assistant Secretary of Defense for Public Affairs (or designee) to

release this pleading and any and all responses, replies, and/or rulings under the same designation to the public only after a final judicial ruling has been published to the parties.

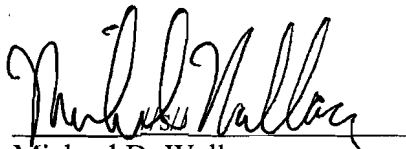
10. Attachments:

Attachment 1- Declaration by CDR [REDACTED], JAGC, USN, dated 6 August 2009.

11. Respectfully Submitted by:



Rachel E. Trest
LT, JAGC, USN
Assistant Trial Counsel
Office of Military Commissions
Office of Chief Prosecutor
[REDACTED]



Michael D. Wallace
MAJ, JA, USAR
Assistant Trial Counsel
Office of Military Commissions
Office of Chief Prosecutor
[REDACTED]

ATTACHMENT 1





**DEPARTMENT OF DEFENSE
HEADQUARTERS, JOINT TASK FORCE - GUANTANAMO
U.S. NAVAL BASE, GUANTANAMO BAY, CUBA
APO AE 09360**

DECLARATION OF COMMANDER [REDACTED]

Pursuant to 28 U.S.C. §1746, I, Commander [REDACTED], declare as follows:

1. I am a Commander in the United States Navy, with 18 years of active duty service. I currently serve as the Staff Judge Advocate (SJA) of Joint Task Force - Guantanamo (JTF-GTMO), at Naval Station Guantanamo Bay, Cuba. I have held this position since 25 July 2008. As such, I am the principal legal advisor to the JTF-GTMO Commander and his subordinate commanders.

2. This declaration is based on my own personal knowledge and information made available to me through my official duties.

**PERMITTING R.M.C. 706 BOARD OR DEFENSE
COUNSEL ACCESS TO ISN 1045'S CELL BLOCK**

3. As more fully described in my declaration dated 13 July 2009, JTF-GTMO does not permit non-JTF-GTMO personnel (e.g., an R.M.C. 706 Board or OMC defense counsel) access to the camp cell blocks for reasons of detention security, force protection, and the physical safety of the non-JTF-GTMO personnel. The detention mission at Guantanamo is performed in a humane manner that protects the safety and security of the detainees and the military personnel at JTF-GTMO. Moreover, cell block access would not provide any privacy to an R.M.C. 706 Board or defense counsel and would not protect sensitive, personal, or privileged information from being disclosed to or overheard by other detainees.

4. JTF-GTMO procedures are established to ensure the safety of personnel and the detainees, and allowing non-JTF-GTMO personnel access to the cell blocks places them at risk of assault by a detainee. Most notably, this occurs in the form of being assaulted and/or splashed

with bodily fluids, to include feces and urine. These types of assaults have occurred hundreds of times in the past. Encounters such as this are more likely to occur when detainees are agitated or disgruntled, such as after a detainee has clearly expressed his desire not to meet with his counsel or an R.M.C. 706 Board.

5. As described in my 13 July 2009 declaration, allowing non-JTF-GTMO personnel on a block can incite mass block disturbances. Detainees are able to recognize regular personnel and know when someone "new" is on the block. Permitting non-JTF-GTMO personnel access to a cell block, or any area other than that specifically designated for that purpose, would seriously compromise the safety of all concerned, including the detainees. These procedures have been established to promote appropriate contact and communication with the detainees. Deviating from the policies would jeopardize good order and discipline within the facility and impede the performance of daily operations.

6. During the last commissions hearing in the Kamin case on 15 July 2009, defense counsel suggested that JTF-GTMO's concerns may be unfounded, noting that my Assistant SJA, Ms. [REDACTED], did not induce a negative or violent reaction when she served ISN 1045 with notice of his court hearing. At the time of the hearing, Ms. [REDACTED] had been employed in my office for several months, met with dozens of detainees, and visited various cell blocks within each of the JTF-GTMO camps multiple times. Moreover, when Ms. [REDACTED] visited ISN 1045 for the first time, she immediately introduced herself as a representative of the SJA's office. The SJA's office has established a measure of trust and rapport with detainees through fair, open, and forthright dealings with them. As a result, Ms. [REDACTED] was able to communicate with ISN 1045, who was calm, alert, and cooperative. A departure from current practices, as addressed below, would likely result in a hostile or violent reaction and place SJA staff, and other JTF-GTMO personnel, at risk.

**MOVING ISN 1045 TO A "NEUTRAL LOCATION" TO FACILITATE
ACCESS TO THE DETAINEE BY R.M.C. 706 BOARD OR DEFENSE COUNSEL**

7. As described in my declaration of 13 July 2009, counsel/detainee meetings normally take place at Camp Echo, a location specifically designed to facilitate such meetings in a secure and safe environment. Camp Echo is a "neutral location" available for defense counsel and R.M.C. 706 Boards to meet with detainees in a safe and secure location. The ability of JTF-GTMO to provide a "neutral location" for meetings is not currently nor has it ever been an impediment to facilitating an R.M.C. 706 Board meeting or an attorney-client visit. As a matter of standard practice, attorney-client visits are accommodated daily in a "neutral location" (i.e., in meeting facilities other than on the actual cell block where a detainee resides). Rather, the issue appears to be whether to move ISN 1045 for an R.M.C. 706 Board meeting or an attorney-client visit without his knowledge and consent or whether to move him after he has already refused to voluntarily go to such meetings.

**MOVING ISN 1045 VOLUNTARILY AND/OR
INVOLUNTARILY WITHIN THE CAMPS**

8. What defense counsel appeared to request during the 15 July 2009 hearing is that ISN 1045 not be permitted an opportunity to refuse to consent to meet with an R.M.C. 706 Board or defense counsel. Specifically, defense counsel suggested that JTF-GTMO move ISN 1045 from his cell without telling him where he is being taken or providing him with an opportunity to refuse, so that an R.M.C. 706 Board or defense counsel could physically approach him.

9. Pursuant to JTF-GTMO policy, any time a detainee leaves his cell, he is informed where he is going and provided an opportunity to decline or to go voluntarily. On a daily basis, there are hundreds of coordinated movements continually occurring on each block. Detainees are moved in and out of their cell blocks for various reasons, including for daily recreation, medical appointments, intelligence interviews, legal visits, phone calls, International Committee of the

Red Cross (ICRC) visits, communal time, and showers. Even in the case of an intelligence interview, detainees are provided an opportunity to refuse or to go voluntarily.

10. Moving ISN 1045 from his cell without informing him where he is being taken would be contrary to well-established JTF-GTMO policy. Moreover, such a tactic would compromise detention security and jeopardize ISN 1045's safety and that of the JTF-GTMO personnel. Moving ISN 1045 without informing him of the reason for the move would induce suspicion and panic, if not outright physical resistance. Furthermore, after ISN 1045 has already repeatedly expressed his unwillingness to participate with an R.M.C. 706 Board and in attorney-client visits, there is little, if any, likelihood that he would cooperate after being taken unwittingly to a meeting he has already refused. Placing ISN 1045 in the same room or immediate vicinity as an R.M.C. 706 Board or defense counsel would likely result in a negative and possibly violent reaction. More importantly, in addition to the foregoing, taking ISN 1045 or any detainee to an undisclosed location without first informing him of his destination would destroy the rapport and trust established between JTF-GTMO and all of the detainees, thereby compromising daily operations throughout all camps (i.e., if the detainees cannot trust the guard escorts, they will refuse to come out of their cells for all reasons (recreation, classes, communal time, phone calls, showers, ICRC visits, etc)).

11. If a detainee refuses an R.M.C. 706 Board meeting or attorney-client visit, a Forced Cell Extraction ("FCE") could be used to physically compel his attendance. An FCE team is used only after unsuccessful attempts have been made to obtain a detainee's compliance without the use of physical force (including advising the detainee of the ramifications of his continued refusal to comply and asking him if he will comply without resistance) or in the event of an emergency when time does not permit lesser uses of force. The FCE team members are trained to use the minimum force necessary, and the level of force is determined based on the level of resistance being offered by the detainee or the type of emergency involving the detainee. Guards

do not have the authority to order the use of an FCE team; such permission is only granted by the Joint Detention Group ("JDG") Commander, who only authorizes FCEs upon court order, for medical necessities, or for detention purposes (e.g., reasonable suspicion that detainee is in possession of a weapon or dangerous contraband). Should the court order it, JTF-GTMO can forcibly extract ISN 1045, against his will and expressed desire, from his cell to produce him for a meeting with an R.M.C. 706 Board or defense counsel.

**ORDERING JTF-GTMO TO CHANGE ISN 1045'S HOUSING LOCATION
TO ISOLATE HIM FROM OTHER DETAINEES' INFLUENCE**

12. The suggestion that ISN 1045 could be housed in another cell in a "neutral" or isolated camp location is not feasible. Contrary to what may be hypothesized, the change in location, whether to isolate ISN 1045 from the alleged influence of other detainees or to provide another "neutral location" for meetings, is unlikely to produce the desired result. Such a move, especially if no explanation was provided, would be viewed as a punitive action. Moreover, such an order would improperly infringe upon the operational authority of the JDG Commander and his responsibility to ensure camp security.

13. First, there is no evidence that ISN 1045's decision not to participate in proceedings has been caused by other detainees exerting influence over him. When Ms. [REDACTED] served notice of the 15 July 2009 court hearing on ISN 1045, no other detainees voiced any opinion on the subject. There was no indication that ISN 1045's decision to absent himself from court was anything other than the product of his own knowing and voluntary decision.

14. Additionally, at the present time, ISN 1045 is housed in Camp 6, which provides opportunities to interact with other detainees in a communal environment. JTF-GTMO's policy is not to isolate detainees either physically or linguistically. Removing ISN 1045 from his communal location and moving him to a more isolated location in order to prevent him from

interacting with other detainees is likely to anger or upset him and further decrease his desire to participate in legal proceedings.

15. Furthermore, as with any detention institution, custody and control measures at JTF-GTMO are in place to maintain good order and discipline and to protect the welfare of JTF-GTMO personnel and detainees alike. Before a detainee is moved from one camp to another, he is formally vetted through a process that carefully considers his past behavior in detention (e.g., whether he is a habitual offender of camp regulations, is violent, or a self harm risk, etc.). A detainee's potential ability to assimilate into the current population of the new camp is also considered (e.g., whether he is disruptive around other detainees, an instigator of misconduct, or possesses psychological issues preventing his effective assimilation, etc.). Only after a detainee is successfully vetted is a move into a new camp approved and ordered by the JDG Commander.

16. There are multiple facilities of varying levels of security at JTF-GTMO in which detainees can be housed. Detainees are housed primarily in accordance with their compliance with camp rules. Camp 6, where ISN 1045 is currently housed, is the newest detention facility in Guantanamo, opening in December 2006. Camp 6 represents a "step down" from the maximum security facility of Camp 5, where ISN 1045 was previously housed. The cells in Camp 6 are approximately 79 square feet in size and are lit by both artificial and natural light via skylights in the common area. No detainees are held in isolation; all detainees housed in the camps have multiple opportunities for daily interaction with other detainees and camp personnel.

17. Once in Camp 6, a detainee is subject to removal for acts of indiscipline and can be removed for a failure to assimilate into the current population. Moving ISN 1045 to a new housing location and removing him from the Camp 6 location earned through his positive behavior thus would likely be interpreted as punitive. Moreover, such a move would inappropriately interject ISN 1045's non-participation in legal proceedings into the process for determining camp assignments. Camp assignments and location determinations are within the

sole province of the JDG Commander. To base detention decisions on criteria other than those explained above undermines the authority of the JDG Commander and his ability to ensure safety and to maintain order within the detention facility. The potential impact on detention security and the threats to the safety of JTF-GTMO staff and camp population cannot be overstated.

18. Since ISN 1045 was moved from Camp 5 to Camp 6, his behavior and compliance with camp regulations has improved. Camp 6 is a less restrictive camp than Camp 5 and is reserved for more compliant detainees. If ISN 1045 were moved from Camp 6, especially without explanation, it is virtually guaranteed that ISN 1045 would be extremely upset and agitated. This directly impacts JTF-GTMO's ability to ensure security within the detention camps and to protect the troops serving here. Such a move would likely result in panic, suspicion, and distrust and would negatively impact any rapport or trust built between ISN 1045 and JTF-GTMO. Further, once ISN 1045 learned the reason for his move, it is highly likely that he would continue to refuse to meet with the R.M.C. 706 Board and would become even less cooperative – both with the legal proceedings and with JTF-GTMO. Any willingness he may have to participate with an R.M.C. 706 Board, defense counsel, or the legal proceedings in general would completely disappear.

**JTF-GTMO'S SECURITY CONCERNS REGARDING ISN 1045 ARE DISTINCT
FROM THOSE GOVERNING THE SITUATION OF ISN 10013**

19. Defense counsel has suggested that the court should issue an order similar to the U.S. District Court order in Ramzi bin al-Shibh v. George W. Bush, (Habeas No. 1:06-cv-1725), which ordered a mental health evaluation of ISN 10013. The court order included a provision that the doctor be provided an opportunity to "meet and confer with Petitioner in Camp Platinum or in such other facility where Petitioner may be located." Reliance upon this order is misplaced since ISN 10013 knowingly and voluntarily met with the doctor at a meeting location designated

by JTF-GTMO (and not on his cell block). Similarly, should an R.M.C. 706 Board be ordered, ISN 1045 will be provided an opportunity to meet with the physician or clinical psychologist at a meeting location designated by JTF-GTMO.

AVAILABILITY OF JTF-GTMO PERSONNEL TO TESTIFY

20. As a matter critical to national security as well as to good order and discipline within the camps, detention security is a matter within the purview of JTF-GTMO, specifically the JDG Commander. Recognizing that the Military Commission has a significant interest in access to ISN 1045 for purposes of legal proceedings, JTF-GTMO personnel are available to testify in detail on any variation of access to ISN 1045 or any other facet of detention security which may be relevant to these proceedings.

CONCLUSION

21. Based on the foregoing, if ISN 1045 consents to an R.M.C. 706 Board meeting or to an attorney-client visit, JTF-GTMO will transport ISN 1045 to a neutral location (e.g., Camp Echo) for that meeting. If ISN 1045 refuses to meet with an R.M.C. 706 Board or with defense counsel, JTF-GTMO will not trick, deceive, or otherwise mislead ISN 1045 in an attempt to produce him for a meeting that he has already refused. Likewise, if ISN 1045 refuses to meet with an R.M.C. 706 Board or with defense counsel, JTF-GTMO will not allow such personnel onto his cell block, nor will JTF-GTMO relocate ISN 1045 to an isolated housing location in order to facilitate a meeting with individuals whom the detainee has repeatedly refused to see. Finally, if ISN 1045 refuses to meet with an R.M.C. 706 Board or with defense counsel, JTF-GTMO will not, in its ordinary course of operations, forcibly extract the detainee from his cell, thereby unnecessarily risking physical injury to the detainee and JTF-GTMO staff.

22. I declare under penalty of perjury that the foregoing is true, accurate, and correct to the best of my knowledge.

Date: 6 August 2009



Commander, JAGC, U.S. Navy
Staff Judge Advocate, JTF-GTMO

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

MOHAMMED KAMIN

ORDER

Inquiry Into the Mental Capacity or Mental
Responsibility of the Accused

__ August 2009

1. After considering the Defense Requesting for the Military Commission To Order a New Inquiry Into the Mental Health of the Accused (D-027), the Government's Response, the Defense Supplement to D-027 and the Government's response thereto, the Military Commission hereby

ORDERS:

A. that an inquiry into the mental capacity of Mohammed Kamin be conducted in accordance with Rule for Military Commission 706;

B. that the sanity board shall consist of two persons who are physicians or clinical psychologists. At least one member of the board shall be either a psychiatrist or a clinical psychologist. The board shall not include either COL [REDACTED], U.S. Army, or CAPT [REDACTED], U.S. Navy, both of whom sat on the prior R.M.C. 706 sanity board. If a Pashto speaking physician or clinical psychologist is reasonably available so that the schedule set forth in paragraph 6 below may be met, he or she should be appointed; in any event, the Government will designate a Pashto speaking interpreter to assist the board in its inquiry. Unless ordered by this Commission, this interpreter may not disclose anything learned during the inquiry, except to defense counsel (LCDR Richard Federico, JAGC, USN; CPT Clay West, JA USAR). The defense may choose to have its assigned interpreter present when the accused is examined, and the Government must provide reasonable notice to the defense as to when the inquiry is to be conducted.;

C. that this evaluation shall include an opportunity for the board to meet and confer with Mr. Kamin at an appropriate location as determined by the Commander, Joint Detention Group, Joint Task Force Guantanamo. If Mr. Kamin refuses to attend the sanity board voluntarily, JTF-GTMO shall forcibly extract Mr. Kamin from his cell and compel him to attend the board;

D. that the sanity board, in its evaluation, shall make separate and distinct findings as to each of the following questions:

(1) At the time of the alleged criminal conduct, did the accused have a

severe mental disease or defect? If so, what is the clinical diagnosis?

(2) Was the accused, at the time of the alleged criminal conduct and as a result of such severe mental disease or defect, unable to appreciate the nature and quality or wrongfulness of his conduct?

(3) Is the accused presently suffering from a mental disease or defect? If so, what is the clinical psychiatric diagnosis?

(4) Does the accused have the present ability to consult with his lawyers with a reasonable degree of cognitive understanding and does he have a rational as well as a factual understanding of the proceedings against him? If so, does the accused have sufficient mental capacity to understand the nature of the proceedings against him (trial by commission) and to conduct or cooperate intelligently in the defense? And,

E. that examinations and tests shall be conducted, if appropriate and required, to answer the questions set forth in paragraph 4 above, and a thorough review of the accused's available medical records shall also be conducted.

2. The sanity board ordered in paragraph 1.A. above shall be completed as expeditiously as possible, consistent with a medically competent and thorough examination to answer the specified questions. Consequently, it is

FURTHER ORDERED:

A. Not later than 21 September 2009, the board shall prepare a summarized report consisting of only the board's ultimate conclusions as to all questions specified in paragraph 3. This report will be prepared in three copies. The Military Commissions Trial Judiciary Staff, trial counsel and the defense counsel will be telephonically notified when this report is ready to be picked-up. At the option of the officer responsible for the summarized report, it may be faxed or e-mailed to the Military Commissions Trial Judiciary Staff, trial counsel, and the defense counsel;

B. Not later than 28 September 2009, the Board shall prepare its full report. This report shall be placed into a sealed envelope and provided only to LCDR Richard Federico, JAGC, USN and CPT Clay West, JA, USAR. The full report will NOT be faxed or e-mailed unless specifically requested by LCDR Richard Federico, JAGC, USN or CPT Clay West, JA, USAR; and

C. Under no circumstances will the full report, matters considered by the Board during its inquiry, or any statements made by the accused to the board (or evidence derived there from) be disclosed to anyone other than LCDR Richard Federico, JAGC, USN, or CPT Clay West, JA, USAR, without express, written authorization from the military judge or defense counsel.

3. Additionally, it is

FURTHER ORDERED:

A. that the Government shall provide Dr. [REDACTED], Ph.D., expert consultant in clinical and forensic psychiatry for the defense, an opportunity to meet with Mr. Kamin to conduct an independent mental health examination of Mr. Kamin, provided Mr. Kamin agrees to meet with Dr. [REDACTED] voluntarily. Mr. Kamin shall not be forcibly extracted from his cell nor compelled to attend this meeting; and

B. that the Government shall provided detailed defense counsel (LCDR Richard Federico, JAGC, USN and CPT Clay West, JA, USAR) the opportunity to meet with Mr. Kamin prior to the examination by the sanity board directed by paragraph 1.A. above, and again prior to the examination by Dr. [REDACTED] to advise Mr. Kamin regarding the mental health examinations, provided Mr. Kamin agrees to meet with counsel voluntarily. Mr. Kamin shall not be forcibly extracted from his cell nor compelled to attend meetings with counsel.

4. Nothing in this order shall be construed as authorizing more than one FCE. This order authorizes the forcible extraction of Mr. Kamin for purposes of the sanity board ordered in paragraph 1.A. above. The defense counsel and Dr. [REDACTED] may also attempt to meet with Mr. Kamin during the period of time he is extracted for purposes of the sanity board; however, if Mr. Kamin refuses to meet with counsel or Dr. [REDACTED] he shall not be forcibly extracted at another time for either of those purposes.

5. Telephone numbers: Military Commissions Trial Judiciary Staff: [REDACTED]. LT Rachel Trest, JAGC, USN, Assistant Trial Counsel: [REDACTED]; LCDR Richard Federico, JAGC, USN, Defense Counsel: [REDACTED]; CPT Clay West, JA, USAR, Defense Counsel: [REDACTED]

Ordered this ____ day of August 2009.

W. Thomas Cumbie
Colonel, U.S. Air Force
Military Judge

Encl:
Charge Sheet